

United States District Court  
Western District of New York

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Sheldon j. English

plaintiff

v.

Inv k. Pero

Tech R. Rice ( Notice of plaintiff cross  
defendants (motion for summary judgement

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(07-CV-00230)

Please take notice that upon the declaration of sheldon english sworn to on August 17,2010 the plaintiff will cross move this motion before the court before Hon. Leslie foschio for an order of summary judgement that the plaintiff has stated his claim and has proved that his claimed should be granted in its entirety with such other and further relief as this court deem just and proper.

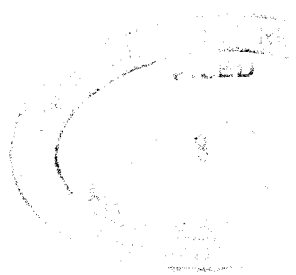
August 27,2010

To;Spencer L. Ash

Attorney for city Defendants

30 church st rm 400a

Rochester,Ny 14614



Susanna X Mattingly

04/22/2005 04:13 PM

To: Philip J Overfield/NYSPAROLE@NYSPAROLE  
cc: William S Fortune/NYSPAROLE, (bcc: Susanna X  
Mattingly/NYSPAROLE)  
Subject: Witnesses of Shooting

Exhibit

A

SPO Overfield:

Per your request:

The following PO's were together in one vehicle doing warrant in the area of 21 Lorimer Street, Rochester, NY.

PO Wayne Poth  
PO Gary Cowick  
PO Arleen Filipski  
PO Susanna Mattingly

In a second vehicle who provided back up were the following PO's.

PO John Jenkins (ASU)  
PO Amy Cumiskey  
PO David Galbo

The PO's (Poth, Cowick, Filipski, Mattingly) were going west on Bloss. We were at the intersection of North Plymouth Avenue and Bloss. We observed shots fired from our south, at the intersection of North Plymouth and Costar. The shooter was a black male wearing dark pants, dark hoodie and long white t-shirt. He entered the passenger side of a black SUV where the vehicle drove down the wrong way of a one way street. The momentarily stopped and started to back up towards our vehicle but then proceeded forward. As the vehicle was moving the shooter fell from the passenger side of the SUV. The shooter and the driver were the only two in the vehicle. While calling out locations to the Rochester Police Department for back up we continued to follow the driver in the SUV. The driver attempted several maneuvers to leave the area but eventually abandoned the vehicle and fled on foot.

PO Galbo joined the search and a witness provided information that a black male was observed going through the back yards with a handgun then returned with no weapon. The PO found the weapon (9 mm) in a shed where he stayed with the weapon.

RPD states they observed that the abandon vehicle had spent casings from a 357 weapon. At the area of the shooting, 9mm casings were located. Meanwhile, a black male had forced entry into a resident's house by kicking in the door. The owners returned home and noted the door was kicked in and notified RPD/Parole where they were looking for the shooter/driver. A releasee(Sheldon English) was found hiding in the house barricading himself. He was arrested for burglary 2nd and criminal mischief.

POs Poth, Cowick, Filipski, Mattingly and Galbo then went to RPD with ASU PO Jenkins for depositions.

SPRINGER - CX

799

Exhibit  
B

1 Q. The newer cars weren't?

2 A. It was the manufacturer, not the year.

3 Q. Okay. So all Dodges were hot cars back in 2003?

4 A. To qualify to say that every Dodge product was stolen as  
11:10AM 5 often as every other Dodge product, I would have to say that  
6 there's -- no, it's not a definite yes or a no.

7 Dodge products, regardless of year, were one of the more  
8 often stolen cars because of the lack of a secure ignition locking  
9 device.

11:11AM 10 Q. Okay. Were there any other makes or models of cars that were  
11 more popular in terms of auto thefts?

12 A. Not that I recall.

13 Q. Honda? Toyota? Older Hondas and Toyotas, they weren't more  
14 popular subjects of theft than Dodges?

11:11AM 15 A. If I had the opportunity to look at statistics, I would be  
16 able to say maybe one was more, but during that time in patrol,  
17 Dodge products were more often than not the more popular choice  
18 for stolen vehicles.

19 Q. Okay. Now, I think you also indicated that this vehicle was  
11:11AM 20 towed?

21 A. Yes, it was.

22 Q. And pursuant to RPD policy, there was an inventory search  
23 done?

24 A. Yes, that's correct.

11:12AM 25 Q. Can you tell the jury what a -- first of all, why is an

1 inventory search done?

2 A. An inventory search is conducted, and I won't cite specific  
3 words from the general book because I don't have it in front of  
4 me, but an inventory search is conducted that any valuables or  
5 property inside the car are documented and/or turned in to the  
6 Property Clerk's Office for safekeeping.

11:12AM

7 Q. Okay. Is that search also done to determine whether there are  
8 any weapons or contrabands in the vehicle?

9 A. Not in all cases, no.

11:12AM

10 Q. In some cases?

11 A. In some cases, yes.

12 Q. Okay. And this was Rochester Police Department policy that  
13 have inventory searches done before a car was towed?

14 A. If I may on your last question?

11:12AM

15 Q. Oh, okay.

16 A. If I may? When you said is an inventory search conducted to  
17 locate contraband, in so much as marijuana or cocaine, that's not  
18 accurate. The inventory search is not conducted in an effort to  
19 locate evidence.

11:13AM

20 Evidence is searched for, looked at based on reasonable  
21 suspicion, probable cause or a search warrant, so an inventory  
22 search --

23 Q. I understand that.

24 A. I wanted to make that clear.

11:13AM

25 Q. I assumed that was the case, but what I was asking was was

1 that part of the basis for -- an inventory search is not only to  
2 check for possible valuables, but also for any contraband or  
3 weapons?

4 A. Those would be peripheral to the focus of the search. A  
11:13AM 5 search is not conducted -- an inventory search is not conducted to  
6 locate contraband.

7 Q. That's not the goal of the inventory search?

8 A. Right, that is correct, that's not the goal or the point. An  
9 inventory search is not used solely to locate contraband.

11:13AM 10 Q. Understood. But the purpose of the inventory search is to  
11 determine if there are valuables, rings, diamond bracelets or  
12 things like that, that those are going to be secured by the  
13 department; is that correct?

14 A. That's correct.

11:14AM 15 Q. Okay. And that was the policy back in 2003? December of  
16 2003?

17 A. Yes.

18 Q. Has that policy changed since then?

19 A. No.

11:14AM 20 Q. Now, I think you also stated that in commenting on these  
21 bags, ziplock bags that have the apple stamp on them --

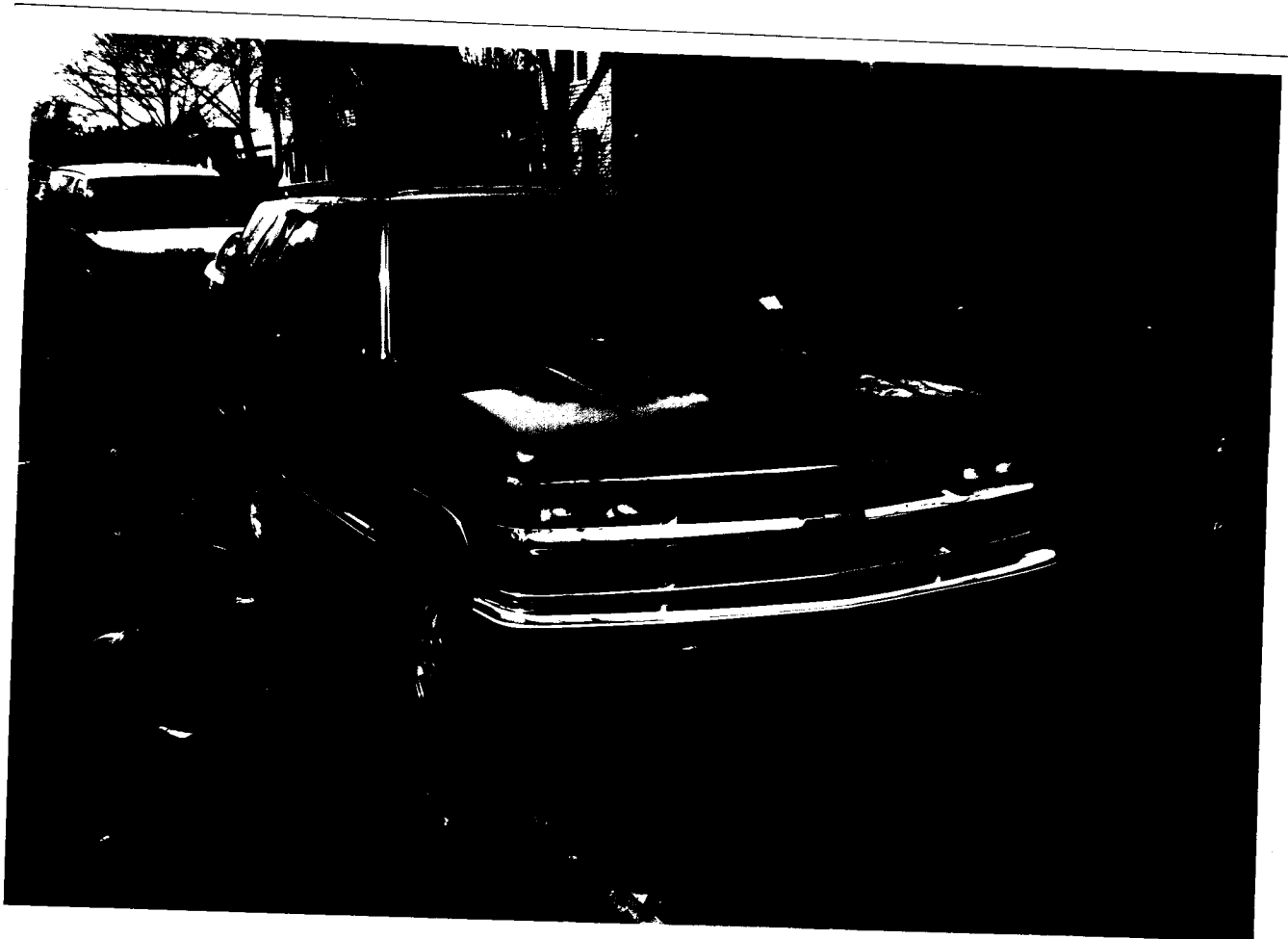
22 A. Yes.

23 Q. -- do you recall that testimony?

24 A. Yes.

11:14AM 25 Q. Okay. They're pretty prevalent in the Rochester area?

Exhibit C



01 23 05 1159 RECKLESS  
 6. CLASSIFICATION AFTER INVESTIGATION (INCLUDE LAW SECTION NUMBER)

## 7. NARRATIVE

DO NOT REPEAT THE RESULTS OF THE PRELIMINARY INVESTIGATION. REPORT ALL ACTIONS TAKEN AND ALL DEVELOPMENTS IN THE CASE SINCE THE LAST REPORT. DESCRIBE AND RECORD THE VALUE OF RECOVERED PROPERTY. LIST THE NAME, RECORD NUMBER AND DESCRIPTION OF PERSONS ARRESTED. EXPLAIN CLASSIFICATION CHANGE. CLEARLY SHOW THE DISPOSITION OF RECOVERED PROPERTY.

BLOCK NO.

(12/05) RESPONSE TO 69 CENTAR ST. 42888 Superior VEH. WAS ABANDONED. A BEING SEARCHED WAS CONDUCTED FOR POSSIBLE WEAPONS INSIDE VEH. W/NEGATIVE RESULTS. TOW RESPONSE TO PROCESS VEH. VEH. IS DESCRIBED AS A 1995 Chevy Tahoe. 3W. Black/Tan interior w/ N.Y. REGISTRATION (247298). VEH. IS REGISTERED TO ASAVON, Sam, B. 10/28/46. OF 327 GLENWOOD AVE. TRM #6842, LANS. TOW PHOTOS OF VEH. VEH. TOWED TO PROCESSOR Bay at City Headquarters FOR PROCESSOR BY TOW #453, EAST OF AUTO. (PO) TOWED TO VEH TO RPD HEADQUARTERS AND TOWED VEH. OVER TO TOW #6842, LANS.

EXIBIT

8. YEAR	9. MAKE	10. TYPE	11. MODEL	12. COLOR(S)	13. V.I.N.
14. REGISTRATION #			15. STATE	16. BY:	TO:
17. RECOVERY FOR: <input type="checkbox"/> RPD			18. LOCATION RECOVERED		
19. EVIDENCE OF DAMAGE / METHOD OF THEFT			20. TIME RADIO NOTIFIED OF RECOVERY		
21. RECOVERED BY			22. OWNER NOTIFIED BY:		

23. CONTINUANCE OF CHANGED TO CLOSED BY		INVESTIGATIVE STATUS	
<input type="checkbox"/> FIELD		<input type="checkbox"/> OFFICE	
<input type="checkbox"/> FIELD		<input type="checkbox"/> OFFICE	
<input type="checkbox"/> ARREST		<input type="checkbox"/> WARRANT ADVISED	
<input type="checkbox"/> NO ARREST		<input type="checkbox"/> UNFOUNDED	
<input type="checkbox"/> NO PROSECUTION		<input type="checkbox"/> JUVENILE DIVERSION	
		<input type="checkbox"/> VICTIM UNCOOPERATIVE	
24. FURTHER INVESTIGATION TO BE CONDUCTED BY:	25. V. RELATIONSHIP TO SUSPECT	26. PERSON(S) ARRESTED	27. SPR FILED
IN. ALIEN		NO YES NO	( ) YES ( ) NO
29. PROPERTY RECOVERED	30. PROPERTY INVENTORY	31. MULTIPLE CLEARUP?	32. XC TO:
NO YES	NO YES LOT #	YES NO	
32. WORKING CR #	33. TELETYPE <input type="checkbox"/> SENT <input type="checkbox"/> CANCELLED	34. ADDITIONAL TECHWORK	
	<input type="checkbox"/> PROPERTY <input type="checkbox"/> SUSPECT	<input type="checkbox"/> COMPOSITE <input type="checkbox"/> SKETCH / DIAGRAM	
35. DATE SUBMITTED	36. REPORTING OFFICER	37. SUPERVISOR APPROVING	
04/22/05	R. H. H. 1532	Ant R. 202	

RPD 11-01 REV 10-00

G. O. 45

rochester police department investigative action report

SEE  
Exhibit  
E





Exhibit F

**COUNT 2**

Count 2 of the indictment charges that on or about April 22, 2005, in the Western District of New York, the defendant, **SHELDON J. ENGLISH**, did knowingly, intentionally and unlawfully possess with intent to distribute a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance.

As to the charge in **COUNT 2**, what is your verdict?

\_\_\_\_\_ **GUILTY**

\_\_\_\_\_ **NOT GUILTY**

Is this verdict unanimous? **YES** (PLEASE CIRCLE)

If your verdict as to **COUNT 2** was "**NOT GUILTY**", do not answer any more questions. Instead, please sign and date the verdict form and inform the Judge that you have arrived at a unanimous verdict.

If your verdict as to **COUNT 2** was "**GUILTY**", please go to **COUNT 3**.

**COUNT 3**

(Do not answer this question unless you answered "**GUILTY**" on Count 2.)

Count 3 of the indictment charges that on or about April 22, 2005, in the Western District of New York, the defendant, **SHELDON J. ENGLISH**, during and in relation to the drug trafficking crime charged in Count 2 did knowingly and unlawfully carry a firearm, namely, one (1) Kahr 9mm, model K9 pistol, bearing serial number AX0741, and in furtherance of the drug trafficking crime charged in Count 2, did knowingly and unlawfully possess said firearm.